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DEPARTMENT OF PUBLIC INSTRUCTION
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SYLLABI

of

Opinions of the Attorney General

from

March, 1915 to May, 1916

F. B. PEARSON
Superintendent of Public Instruction

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In the 1915 edition of the Ohio School Laws the syllabi of the opinions of the Attorney-General were placed after each section to which they applied. The syllabi from 1911 to March, 1915, have therefore already been published. Numerous requests have come to this Department to continue this work for the remainder of the year. The syllabi of various opinions have been sent to a few county superintendents and in every instance this official has been strong in his argument that we continue this work. Accordingly, we are having enough of these printed to supply every school official interested. The sections of the General Code to which the syllabi apply have been placed opposite in each case. This bulletin contains the syllabi of the opinions of the Attorney-General applying to school problems from March, 1915, to May, 1916.

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4744-3 168. Mar. 26, 1915. The amounts retained by the county auditor under Section 4744-3, G. C. for the purpose of paying part of the salaries of the county superintendent of schools and the district superintendents should be charged against the apportionment of the state common school fund, and against the tuition fund of the district.

1352-1 173. Mar. 27, 1915. Detention Homes of Juvenile Courts are not required to be certified under section 1352-1 G. C.

4747 177. Mar. 27, 1915. A member of the Ohio General Assembly cannot serve as a clerk of the village board of education of which he is a member and receive a salary as such clerk.

5656 (p. 199) 178. Mar. 27, 1915. A board of education may borrow money under Section 5656, G. C. for the purpose of paying unpaid installments of teachers' salaries.

Bonds may not be issued under this section, however, unless within the limitations of the law interest and sinking fund levies sufficient to retire them may be made during the years for which they are to run. Such interest and sinking fund levies being preferred to current levies by the Act found in 104 O. L., 12, the board should anticipate its needs for current purposes and its needs for interest and sinking fund purposes and so apportion its indebtedness as not to impair its future revenues for either purpose.

7592 179. Mar. 27, 1915. Section 7592, G. C. is no longer in force and no levy outside the five mill limitation of the Smith Law can be made thereunder, except as therein provided. (See. 5649-5 et seq.)

7751 Section 7751, G. C. cannot be so interpreted as to permit a levy thereunder outside of the five mill limitation of the Smith Law.

7595 The opinion of the attorney General to the Auditor of State under date of February 26, 1912, relative to the application of the law for state aid to weak school districts concurred in, but limited to its application to the said law as it then existed.

[Another opinion was rendered by the attorney general to the auditor of state in 1912 (p. 89, supplemented on p. 108). This opinion is qualified by the opinion of March 27, 1915 to the effect that—"A board of education which has submitted a budget estimate requiring the levy of taxes to the

full extent of any absolute limitation of the Smith law, such as five mill limitation of Section 5649-3a, G. C., should not be held to have disqualified the district to receive state aid, if such amount is insufficient to operate the schools in accordance with the provisions of the state aid law." (At the time the earlier opinions were rendered three-fourths of the levy had to be for tuition purposes. It is now required that two-thirds be for tuition purposes.)]

184. Mar. 30, 1915. The provisions of Section 4726, G. C. as amended 104 O. L., 139, taken in connection with the provision of Section 4839, G. C., authorizes the calling of a special election in a rural school district for the purpose of submitting the question of centralization to the vote of the qualified electors of such district. 4726 4839

197. April 3, 1915. The board of education has no authority in law to rent a school building, or part thereof, to a secret society for the purpose of holding lodge sessions and such social functions and entertainments of such society as are not open to all persons in the community on equal terms or which will not, in the judgment of the board of education, benefit the people of the community. (School houses may be used for holding grange or similar meetings, see Sec. 7622-3.) 7622-1

214. April 8, 1915. Where a school district has no bonded indebtedness, and a board of sinking fund commissioners has not been created, the board of education of the district in the issue and sale of its bonds, is not required to procure the appointment of a board of commissioners of sinking fund for the district before proceeding to offer such bonds to the Industrial Commission and to advertise and sell such bonds or any residue not purchased by the Industrial Commission. 2294 (p. 206) [1465-58]

218. April 8, 1915. The provisions of Section 7600, G. C., which reads "each school district within the county shall receive thirty dollars for each teacher employed in such district" means for each teacher to be employed in such district for the ensuing year. 7600

226. April 10, 1915. If the certified statement of facts of the county auditor to the state auditor under the provision of Section 7596, G. C., as amended in 103 O. L., 267, shows that the proper proportions required by Section 7595, G. C., as amended in 104 O. L., 165, have been observed in the use of the funds of a school district, the negligence of the board of education of such district in the preparation of its annual budget and of the budget commissioners of 7596

the county in their consideration of said budget, in failing to observe said proportions, does not prevent the district from receiving state aid provided such district has complied with all the other requirements of the statutes governing state aid to weak school districts.

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7596

228. April 10, 1915. Levies illegally made in excess of the legal maximum for school districts are not required to be divided in the proportion of three-fourths for tuition and one-fourth for other purposes in order that a school district so levying may be qualified to receive State aid, but so much of the proceeds of such levies as are applied to tuition purposes must be counted as receipts of the board for the purpose of ascertaining the deficiency for which State aid is to be extended. [The ratio above named was changed by law taking effect August 29, 1915, to two-thirds and one-third.]

7596

236. April 14, 1915. If a school district, because of an error in estimating receipts and expenditures for the current school year, receives an amount more than sufficient to make up its actual deficit for such year, it is the duty of the state auditor, upon discovering such error, to correct the same by drawing on the treasurer of such school district for the extra amount. If there is not a sufficient amount of money in the treasury of such school district to the credit of the tuition fund to honor said draft, the state auditor should withhold said amount from the next allowance made to such district on its application for state aid. On the other hand, if the district, because of such an error, fails to receive an amount necessary to make up its deficit, the state auditor upon discovering such error, should pay to the treasury of such school district an amount sufficient to make up such deficit.

7595

237. April 14, 1915. If the board of education of a school district, in its annual budget, fails to observe the appropriations required by Section 7595, G. C. as amended in 104 O. L., 165, to-wit: the three-fourths tuition fund and one-fourth for all other purposes, but in making the levy of the amount allowed by the county budget commissioners said proportions are observed, said district is not prevented from receiving state aid on account of the negligence of the said board of education, provided said district has complied with all other requirements of the statutes governing state aid to weak school districts. [The ratio above named was changed by law taking effect August 29, 1915, to two-thirds and one-third.]

274. April 23, 1915. Electors residing in territory attached to a village school district for school purposes by the county board of education, may vote for school offices and on all school questions in such village school district. 4682 4709

253. April 17, 1915. The board of education of a school district has authority under the provisions of Sections 5656 et seq. G. C., to fund indebtedness consisting of unpaid salaries of the teachers and janitors of the schools of such districts. 5656 (p. 199)

The board of education of a school district does not have authority, under the provision of Sections 5656 et seq., G. C., to fund indebtedness consisting of unpaid bills for contingent expenses.

257. April 19, 1915. The tax limitations do not operate as debt limitations in the manner defined in Rabe v. Board of Education, 88 O. S., 403, nor under Article XII, Section 11 of the Constitution, when a board of education under Section 7625, G. C., merely determines to submit the question of the issuance of bonds in a given amount to a vote of the electors. Such limitations apply, however, when after a favorable vote the board proceeds to issue the bonds, and prevent their issuance, unless within the period for which the bonds are to run sufficient interest and sinking fund levies can be made within the tax limitations. 7625

Even in such case the principles referred to have a limited application because of the fact that the bonds are issued by a vote of the people and because of the amendment to Section 5649-1, G. C. (104 O. L., 12).

[The decision in the case of Rabe v. Board of Education above referred to was to the effect that bonds may not be issued under Section 7629 unless it appeared that the board of education, making a levy allowed by law and in view also of the possible reduction of that levy by the board of review, could reasonably anticipate that the bonds could be sunk without impairing the available funds so that the schools could not be maintained. This decision further asserted that Section 7630 was repealed by implication by the Smith Tax Law. It will be observed that this decision was in regard to bonds issued under 7629, rather than bonds issued under 7625.] 7629

273. April 22, 1915. A levy for the payment of principal and interest on bonds issued to erect or repair school buildings, rendered necessary as a compliance with the orders of the chief inspector of workshops and factories or by the destruction of school buildings by fire or other casualty, 7630-1

said bonds being issued pursuant to a vote of the people, is not within the five mill limitation or any of the other limitations of the Smith one per cent law.

5656 (p. 199) A board of education not having fully exercised the authority conferred by law to levy taxes for sinking fund and interest on bonds falling due, is not authorized to borrow money or issue bonds for the purpose of extending or refunding said indebtedness under the provisions of section 5656, G. C.

7630-1 7629 283. April 24, 1915. For the purpose of repairing or erecting school buildings in compliance with orders of the chief inspector of workshops and factories, or when rendered necessary by destruction of buildings by fire or other casualty, a board of education may issue and sell bonds under the provisions of Section 7629, G. C. without a vote of the electors; the tax levy therefore being within the five mill and ten mill limitations of the Smith law.

7625 If the funds at its disposal or that can be raised under Section 7629, G. C. would not be sufficient, the board may submit the proposition to the electors in conformity with the provisions of Section 7625 G. C. et seq.; the tax levy for such bonds and interest being outside the five mill and ten mill limitations, but within the fifteen mill limitation of the Smith law.

7630-1 5649-4 Upon determination that sufficient money cannot be raised within the limitations applicable to each of the foregoing methods, the board may submit the proposition to issue bonds pursuant to the provisions of Sections 7630-1 G. C. and 5649-4, G. C., to which latter procedure none of the limitations on taxation is applicable.

4682-1 4683 287. April 26, 1915. Upon the dissolution of a village school district, the title to the school property of said district passes to and vests in the board of education of the contiguous rural school district to which such village school district is joined, but only the property within the limits of said village school district will be subject to a tax levy for the payment of any indebtedness incurred by the board of education of said village school district, and the board of education of said rural school district will have no authority in law to assume said indebtedness or to levy a tax to provide a fund for the payment thereof either upon the property within the limits of said village school district or upon the general duplicate of said rural school district.

If the levy for the payment of said indebtedness has not been made by said board of education of said village

school district at the time of dissolution, said village school district as a separate taxing district, and its board of education as its taxing authority, must continue for the purpose only of levying a tax for the payment of such inbedtedness until such time as said indebtedness will have been paid.

290. April 27, 1915. If the board of education of a school district finds that there is a surplus in its tuition fund, resulting from the local tax levy for said fund, which will not be needed for any of the purposes of said funds, and that it is necessary to transfer said surplus to its building fund to be used in the construction of a school building which the board of education finds necessary for the proper accommodation of the pupils of its district, such board may, upon the order of the common pleas court, on an application duly made in compliance with the requirements of Section 2296 et seq., G. C., transfer said surplus from said tuition fund to the building fund for the purpose above named. [2296] [2297]

292. April 27, 1915. The provision of Section 7730, G. C., as amended 104 O. L., 139, that no school of any rural district shall be suspended or abolished until after sixty days' notice [see below] has been given by the school board of such district, is mandatory, and no school is suspended until such notice is given even though the average daily attendance in such school for the preceding year was less than twelve. [Since this opinion was rendered the law has been so amended as to require but ten days' notice.] 7730

293. April 27, 1915. District superintendents cannot require the teachers of their district to attend the meeting provided for in Section 7706-1, G. C., (104 O. L., 144), on Saturday afternoons. 7706-1

If the board of education of a district authorizes the holding of these meetings on regular school days and during school hours, it is the duty of the teachers of said district to attend such meetings, and said teachers are entitled to their regular pay for attending said meetings the same as if they had taught during the time used for such meetings.

Such district, by paying its teachers for attendance at meetings held on regular school days, does not, on this account, render itself ineligible to receive state aid, providing it complies with all the statutes governing state aid to weak school districts. 7595 7596

Where a district superintendent, employed under the provision of Section 4740, G. C., as amended in 104 O. L., 141, gives one-half of his time to teaching, the proportionate 7595-1 7596

amount paid him as a teacher, based upon the minimum salary of $70.00 per month, mentioned in item 4 of the schedule of salaries provided in Section 7595-1, G. C. (104 O. L., 165), should be included by the board of education of the district in which he teaches in estimating its deficiency for the purpose of making application for state aid, and the fact that said superintendent has been paid for teaching one-half his time, does not prevent said district from receiving state aid, providing said district has complied with all of the requirements of the statutes relating thereto.

7624 294. April 27, 1915. If the board of education of a school district, by a proper resolution of record, determines that it is necessary to procure a tract of land on which a church parsonage is located for school purposes, and that it is unable to agree with the official or officials of the church organization holding the title to said property in trust for said organization, upon the sale and purchase thereof, said board of education, acting under authority of, and in compliance with the requirements of Section 7624, G. C., as amended in 103 O. L., 466, may acquire the title to said property in the manner provided by law for the appropriation of private property by municipal corporations.

4692 4736 316. May 1, 1915. A county board of education, acting under authority of, and in compliance with, the provisions of Section 4736, G. C., as amended in 104 O. L., 138, has authority to transfer a part of a rural school district to a contiguous village school district, but said county board of education has no authority in law to suspend any school in the territory so transferred. Said suspension can only be effected by proper action of the board of education of said 7730 village school district under authority of Section 7730, G. C., as amended in 104 O. L., 139, and in compliance with the requirements of said section.

7739 7777 321. May 3, 1915. The board of education of a school district cannot be compelled to furnish school books free of charge to pupils of a parochial school — Board authorized to purchase only text books adopted by board.

7596 335. May 6, 1915. If a school district receives more than it is legally entitled to from state aid for weak school district, an adjustment may subsequently be made by deducting from subsequent amounts to which it is entitled, the amount illegally received.

4744-3 336. May 6, 1915. The board of education of a county school district has no authority in law to employ counsel other than the prosecuting attorney of the county.

361. May 13, 1915. Under the provisions of Section 7817, G. C., as amended, 104 O. L., 103, county boards of school examiners are no longer required or authorized to publish notice of the time and place of holding public meetings for the examination of applicants for county teachers' certificates. 7817

381. May 17, 1915. A traction company, owning or operating an interurban railroad, has no authority in law to condemn, for railroad purposes, a part of a tract of land the title to which is held by the board of education of a school district in trust for public school purposes. 4756 [8759]

388. May 19, 1915. Treasurers and sureties of a county, township, city, village or school district may be released for loss of public funds, without submitting the question of release to vote of the people — certain restrictions. (2303-2311)

406. May 25, 1915. If the facts in the particular case do not justify a finding of "urgent necessity" by the board of education of a school district within the meaning of Section 7623, G. C., a failure on the part of said board to comply with the requirements of said section renders the contract for the construction or repair of a school building void. 7623

419. May 28, 1915. The board of education of a school district, acting under authority of Section 4749, G. C., may determine by resolution that certain real property which said board owns in fee is not needed for school purposes and that it is for the best interest of the school district to sell the same, and if the value of said property is less than three hundred dollars the provisions of Section 4756, G. C., as amended in 103 O. L., 536, are not applicable to the sale of said property and the same may be disposed of at private sale. 4749 4756

458. June 5, 1915. The board of education of a school district in which but one bank is located, having determined by resolution to invite bids from the several banks in the county, including the bank located in said district, should let the contract for the deposit of its funds to the bank or banks offering the highest rate of interest for the full time the funds, or any part thereof, are on deposit. 7604 7607

463. June 8, 1915. Contracts entered into prior to May 27, 1915, under Section 4740, G. C., as amended 104 O. L., 141, in village or rural school districts, or unions of school districts, for supervision purposes for the employment of part time superintendents for periods of time extending beyond the taking effect of Senate Bill No. 323 passed by the 81st 4740

General Assembly, amending said section 4740, are not subject to impairment by anything contained in said last amendment. In districts which are discontinued as supervision districts by such last amendment, that is to say, in districts not maintaining a first grade high school, such superintendents so employed are entitled to perform similar services, at the same compensation, during the life of their contracts, or to damages for breach of the contract, although the position of part time superintendent is abolished by the amendment referred to.

Such contracts in such districts entered into on or after May 27, 1915, however, must be regarded as having been made in contemplation of the possible going into effect of Amended Senate Bill No. 282, passed on that day and amending Section 4740 in this respect similarly to the amendment of that section effected by Senate Bill No. 323. Therefore, superintendents so employed after said date cannot complain of the effect of the statute upon the powers and duties of the board of education with which they contract, and the abolition of their positions by the taking effect of the act would not constitute an impairment of such contract.

Amended Section 4740, G. C., as incorporated in Senate Bill No. 323, puts an end to state aid for the salaries of part time superintendents in separate supervision districts. This amendment of the law applies to the salaries of superintendents employed prior to May 27, 1915, state aid not being one of the obligations of such contracts, and the district having no contractual relation to the state with respect to state aid.

Technically, boards of education may not act under Section 4740 as amended in 1915 until the amendatory acts become effective. It would be proper, however, for boards of education to anticipate the probable going into effect of such amendatory acts and to make their arrangements conditionally in view thereof.

Amended Senate Bill No. 282, passed May 27, 1915, makes it mandatory upon the county board of education to redistrict the county district into supervision districts containing not fewer than thirty teachers. Superintendents employed prior to that date by districts having fewer than thirty teachers (and more than twenty) are, notwithstanding the change in the law, entitled to similar work at the same salary for the balance of the terms of their respective contracts, if the same extend beyond the date when the amendment becomes effective, or to damages as for the breach of such

contracts. Superintendents employed after such date, however, may not complain of the change in the law, as they must be deemed to have contracted with knowledge of the probability of the amendment going into effect.

Under Section 4738, G. C., as amended in 1914, a county board of education may re-district the county district into supervision districts at any time upon petition of three-fourths of the presidents of the boards of education of the districts constituting the county district. All contracts with district superintendents made under this section must be deemed to have been made subject to the exercise of this power; so that if a county board of education acts prior to the taking effect of the amendments of 1915 upon the petition of three-fourths of the presidents of the several boards of education, and so re-districts the county district as to make compliance with the new law possible, superintendents employed prior to May 27, 1915, cannot complain of such action.

488. June 11, 1915. The board of education of a county school district has no authority in law to publish a report of the schools of said district for the school year. 4744-3

510. June 18, 1915. Motion picture films, which have not been approved by the Ohio Board of Censors may not be exhibited in the public schools of the state. [871-52]

523. June 21, 1915. Where the facts in a particular case show that the removal of a member of the board of education of a school district is only temporary; that he maintains a home in said district during his absence and that he fully intends to return to said district at a specified time, said removal does not create a vacancy in said board of education within the meaning of Section 4748, G. C. 4748

526. June 23, 1915. Section 4770, G. C., is not repealed by implication by the provisions of Section 4782, G. C., as amended in 104 O. L., 158. The provisions of Section 4770, G. C., are still in force and taken in connection with the provisions of Section 4782, G. C., as amended, and Section 4783, G. C., prescribe the duties of the clerk of the board of education of a school district in making the annual settlement with the county auditor. 4770 4782 4783 4771

The clerk of a board of education which has dispensed with its school treasurer, under authority of Section 4782, G. C., as amended, is not entitled to the compensation and mileage formerly allowed to said treasurer, under authority of Section 4771, G. C., for making the annual settlement with the county auditor, as required by the provision of Section 4770, G. C.

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535. June 25, 1915. The vice president of the board of education of a school district, duly elected by the members of said board under authority and in compliance with the requirements of Section 4747, G. C., as amended in 104 O. L., 139, may act as president of said board and perform the duties of said office which has been vacated by the resignation of the president of said board from said office.

7892

549. June 28, 1915. The provisions of Section 7892, G. C., are not applicable to the case of a person who has been retired as a teacher by the board of education of a school district under authority of Section 7880, G. C., and who has been granted a pension by said board of education under authority of Section 7883, G. C.

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4682-1
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569. July 1, 1915. Where a township contains sixteen or more square miles and a village is created out of said township, under provision of Section 4687, G. C., as amended 104 O. L., 134, said village becomes a village school district separate and distinct from the township rural school district and the dissolution of said village school district and the union of said district with the contiguous township rural school district, under the provision of Section 4682-1, G. C., can be realized only upon the proper action of the board of education of said village school district in compliance with the requirements of said section.

No action on the part of the board of education of said rural school district in connection with said dissolution and union is either authorized or required, and said board of education of said rural school district has no power to prevent such dissolution and union. [But see opinion 287.]

After said village school district has been dissolved and joined to the contiguous township rural school district, said village, or the electors thereof, have no authority in law to withdraw the territory within the corporate limits of said village from said township rural school district and re-establish said village school district. [But a district may be created by the county board under Section 4736.]

4715

570. July 1, 1915. Each member of the board of education of a rural school district elected in November, 1913, was entitled to $2.00 compensation for each meeting attended during the year 1914, but for not more than ten meetings in said year. For the years 1915, 1916 and 1917 said member is entitled to $2.00 compensation for each meeting attended, but for not more than five meetings in any of said years provided such rural school district contains sixteen or more square miles.

596. July 12, 1915. Where the board of education of a rural school district under authority of Section 4735-1, G. C., 104 O. L., 138, submits to a vote of the qualified electors of said district the proposition of dissolving said district and joining it to a contiguous rural or village school dstrict, and the vote is unfavorable thereto, upon the petition signed by not less than one-fourth of the electors residing in said district, said board of education may again submit said proposition to a vote of the electors of said district. 4735-1

609. July 14, 1915. Where the boards of education of two or more adjoining rural school districts, or of a rural and village school district, unite such districts for high school purposes, under authority of section 7669 G. C., as amended in 104 O. L., 229, said boards should be governed by the provisions of section 7669 et seq., of the General Code, and should complete the proceedings commenced by them under said sections. 7669 7670 7671 7672

612. July 15, 1915. The board of education of a rural school district may borrow money, under authority of Section 5656, G. C., to pay a charge against said district made by the board of education of a county district, in which such rural district is located, in case said county board of education furnishes transportation to pupils of said rural district, as required by Section 7731, G. C., as amended, when the local board fails or neglects to furnish such transportation, or to pay for services actually rendered under a contract of employment for this purpose. 5656 (p. 199) 7731

615. July 16, 1915. Under the provision of Section 7681, G. C., as amended 103 O. L., 897, the parent of a child attending the schools of a district must in fact reside within said district during the time of such attendance in order that said child may be entitled to such attendance free of charge. [But see also Section 7683.] 7681

618. July 17, 1915. The county board of education may allow a county superintendent an amount sufficient to cover the actual and necessary expense of maintaining and operating an automobile owned by him and used in the discharge of his duties, having due regard for the extent of such use in public and private business. 4734

The provisions for the allowance to a county superintendent of "a sum not to exceed three hundred dollars per annum for traveling expenses and clerical help" is a limitation upon the amount of expenses of such superintendent which may be allowed by the county board, which expenses can only be allowed upon itemized bills of expenses actually 4744-1 4734

incurred, and the county board has no authority to allow the superintendent three hundred dollars a year in monthly installments of twenty-five dollars each.

7630-1
5649-4
5649-2
5649-5b

620. July 19, 1915. Where under authority of Section 7630-1, G. C., bonds are issued by a board of education for the purpose of constructing a new school building, in compliance with the order of the state inspector of workshops and factories, and thereafter a sinking fund levy cannot be made for the purpose of paying the interest on said bonds and retiring the same at maturity without exceeding the fifteen mill limitation provided by law, said board of education may make said levy under authority of said Section 7630-1, G. C., and Section 5649-4, G. C., irrespective of the limits provided by Sections 5649-2 to 5649-5b, G. C., and referred to in said Section 5649-4, G. C.

5649-3b

621. July 19, 1915. House Bill No. 342, passed April 27, 1915 and filed in the office of the Secretary of State April 30, 1915, if no petition for referendum is filed thereon prior to July 30, 1915, will go into effect on that date. Said bill amends Section 5649-3b, G. C. In other respects the laws governing Budget Commissioners remain the same. Under said bill the Budget Commissioners will consist of the County Auditor, County Treasurer and Prosecuting Attorney.

(3281)

631. July 20, 1915. Township trustees may not sell or lease township property by private arrangement, but must dispose of such property, if at all, at public auction.

A board of education may lease a site for a High School building.

5649-1
7613
5649-3a
5649-3c

638. July 22, 1915. Where a board of education, prior to the first Monday in June, legally authorizes an issue of bonds and includes in its annual budget submitted to the county auditor on the first Monday of June a levy for interest and sinking fund purposes in connection with such authorized bond issue, it is the duty of the budget commissioners to allow such levy, although the bonds had not been issued when the budget was submitted, and the rule is the same even where such bonds have not yet been issued at the time final consideration is given to the budget by the county budget commissioners.

7730

642. July 23, 1915. Under the provisions of Section 7730, G. C., as amended by Senate Bill No. 282, effective July 27, 1915, it is discretionary with the county board of education whether a school shall be suspended when the average daily attendance falls below ten.

650. July 26, 1915. Under Section 4738, G. C., as amended, 106, O. L., 396, the county board of education will be without authority to create a supervision district in which less than thirty teachers are employed. 4738

654. July 27, 1915. Section 5653, G. C., as amended, 104 O. L., 145, is mandatory and exclusive with respect to the transfer of the surplus found at the June session in the dog tax fund. Such surplus or part thereof may be transferred by the commissioners and paid to a society for the prevention of cruelty to children and animals, if deemed neccessary for the uses and purposes of such society; any part of such surplus not so transferred must be transferred to the board of education fund as therein provided. 5653

656. July 27, 1915. Section 4782, G. C., as amended, 104 O. L., 159, requiring the board of education of a school district, when a depository has been provided for its school moneys, to dispense with a treasurer of such moneys, is directory only. There can be no such treasurer, however, in a district in which there is no depository nor after the first organization of a board of education, under the amendments to the school code. [This "first organization" has already taken place; there can now be no treasurer except in case of emergency — when there is temporarily no depository; otherwise the clerk shall perform the duties of treasurer.] 4782 4784 4763

663. July 29, 1915. Where the board of education of a township school district to which territory in another township and belonging to a joint sub-district was attached, by virtue of Section 4723, G. C., now repealed, failed to file a map of such attached territory as required by Section 4724, G. C., now repealed, such board of education cannot recover from the board of education actually receiving the school tax from such attached territory, either such tax or the tax the first named board might have received had it filed the proper map, or the actual expense of furnishing school facilities to the youth of the attached territory. [4723, repealed 1914] 7734 7682

675. August 2, 1915. The board of education of a school district, which does not maintain a high school and which has not entered into an agreement with any other board or boards of education for the furnishing of high school facilities to the pupils residing in said district, and entitled to high school facilities, cannot be charged with the payment of the tuition of such pupils unless the notice in writing required by the provision of Section 7750, G. C., be filed with the clerk of said board of education not less than five days previous to the beginning of the high school at- 7750 7748 7747

tendance of such pupils, setting forth the name of the school to be attended and the date the attendance is to begin.

7811 679. August 4, 1915. Under the provisions of Section 7811, G. C., as amended in 104 O. L., 102, the membership of the county board of school examiners is limited to the superintendent of the schools of the county district, one district superintendent, and one teacher, other than a district superintendent, having the qualifications prescribed by said Section 7811, G. C., as amended.

4739 4738 680. August 4, 1915. A contract of employment of a district superintendent under authority of Section 4739, G. C., as amended in 104 O. L., 140, entered into on or after May 27, 1915, the date of the passage by the General Assembly of Amended Senate Bill No. 282, amended Section 4738, G. C., as amended in 104 O. L., 140, is made in contemplation of the probable going into effect of said amended Senate Bill and the carrying out of its requirement that the county board of education shall re-district the county school district for district supervision purposes into districts containing not less than thirty teachers, and the obligation of such contract would not be impaired by the action of the county board of education as required by the provision of said amended statute, even though such action might result in materially changing the duties of the district superintendent or in abolishing his district and position.

7734 7682 742. August 19, 1915. The board of education of a school district may lawfully contract with the board of education of another school district for the admission of its pupils into one or more of the schools of such other district and the amount of tuition for such attendance may be fixed by the terms of said contract.

4748 746. August 19, 1915. Under the provision of Section 4748, G. C., a person elected by the board of education of a school district to fill a vacancy caused by the resignation of a member of such board, holds office for the unexpired term for which the member so resigning was elected, and until his successor is elected and qualified.

7870 749. August 20, 1915. A district superintendent is not entitled to pay for attending a teachers' institute under authority of Section 7870, G. C., as amended in 104 O. L., 157.

4734 750. August 20, 1915. A member of a county board of education is entitled to reimbursement for the actual and necessary expense incurred by him in operating an automobile owned by him while used as a means of conveyance in attending a meeting of said board.

751. August 21, 1915. The educational qualifications prescribed by Section 1321-1 G. C. should not be exacted as a condition of matriculation in a dental college. Such qualifications apply only to applicants for license to practice dentistry. [1321-1]

769. August 26, 1915. The certificate required to be filed in the office of the Secretary of State under provision of Section 9922, G. C., should contain a schedule of the kind and value of the property owned by the institution mentioned in said section and the statement of the value of said property should be verified by the oath of the trustees of said institution. 9922

779. August 28, 1915. Section 7629, G. C., was not repealed by implication by the enactment of Section 5649-2 to 5649-5b, G. C., and the board of education of a school district may issue bonds under authority of said Section 7629, G. C., for the purposes therein set forth, subject to the limitations provided in said section and subject also to the limitations provided by Section 5649-2 to Section 5649-5b, G. C. 7629

781. August 28, 1915. A board of education cannot delegate to a committee not composed of its own members, power to make a contract with a bank for the deposit of school funds. A depository contract must be made by board when in session. Bonds can be deposited as collateral security for public funds held by such bank under depository contract. When bank fails, proceeds from sale of bonds held as security from depository contract can be used to make good amount on deposit at time the bank closed its doors without consent of officers in charge of liquidation. Method of proving security. 7604 7605 7607 4784

790. September 2, 1915. Upon the filing of a petition of at least forty per cent. of the electors of a school district, asking for a re-submission of the question of centralizing the schools of said district, the board of education of said district, acting under authority of Section 4726, G. C., as amended in 104 O. L., 139, may, by resolution, determine to re-submit said proposition to a vote of said electors, at a special election called for that purpose, and in said resolution fix the time for holding said special election. 4726

The question of issuing bonds for the purpose of erecting a suitable school building, purchasing a site, etc., having been submitted to a vote of the electors of said district by the board of education of said district, under authority and in compliance with the provisions of Section 7625

7625, G. C., at the same time that the question of centralization was first submitted, and a majority of said electors, voting on said proposition, having voted in favor of said bond issue, it will not be necessary to re-submit this question to a vote of said electors.

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793. September 2, 1915. Under the provisions of Section 7604, G. C., as amended in 106 O. L., 328, it will be the duty of the board of education of a school district, which prior to May 15, 1915, made a contract for the deposit of its funds, which contract by its terms will not expire until July 1, 1916, to let a new contract for the deposit of said funds within thirty days after the first Monday in January, 1916, to commence with the date of the expiration of the existing contract and to expire within thirty days from the first Monday in January, 1918.

Where a contract was made subsequent to said date of May 15, 1915, and prior to August 26, 1915, for a term of two years, the provisions of said amended section will terminate said contract within said thirty-day period and require the letting of a new contract in compliance with said provisions.

The board of education of a school district may, under authority of said Section 7604, G. C., as amended and now in force, let a contract for the deposit of its funds, which contract, by its terms, shall expire within thirty days after the first Monday in January, 1918.

7595
7595-1

799. September 7, 1915. If the board of education of a school district complies with all the requirements of the statutes governing state aid, said district will not be debarred from receiving such aid because of the fact that the board of education of such district has contracted to pay certain teachers a greater salary than that required by the provisions of Section 7595-1, G. C., as amended 106 O. L., 430.

7730

Under the provisions of Section 7730, G. C., as amended in 106 O. L., 398, when the average daily attendance of any school in a county district for the preceding year was below ten, the board of education of such county district is authorized to direct the local board of education to suspend said school and transfer the pupils to another school or schools.

It is the duty of such local board to comply with the order of said county board directing such suspension and transfer and to post the notices required by the provisions of said Section 7730, G. C., as amended.

The local board of education is the "suspending author-

ity" referred to in the latter part of said Section 7730, G. C., as amended.

800. September 8, 1915. Under Section 1261-34, G. C. [1261-34]
(Greenlund Act), the street or streets upon which the school premises abut are made the straight line upon which the respective distances of 200 feet and 300 feet in any direction shall be measured.

Said section does not authorize measuring part of the distance along one street and the balance of the distance along a separate and distinct intersecting street.

The fact that the street upon which the school premises abut is curved or broken is immaterial.

801. September 8, 1915. The word "brother" as used 12932
in Section 12932, G. C., does not include the relation of p. 109
brother-in-law.

802. September 8, 1915. The office of president of the 4747
board of education of a township rural school district is not incompatible with the office of township treasurer.

803. September 8, 1915. A school district will not be 7595-1
debarred from receiving state aid because of the fact that the board of education of said district has employed teachers at salaries in excess of those required by the provisions of Section 7595-1, G. C., as amended 106 O. L., 430, provided, however, that the average of salaries paid by said board of education to the high school teachers of said district is not more than seventy dollars per month.

It is not necessary for a board of education, in making 7595
application for state aid, to show the exact amount which each high school teacher employed by said board is entitled to receive according to the terms of his contract of employment. If said application shows the number of high school teachers employed, the number of months for which they are employed, and the total amount of the salaries which said high school teachers will be entitled to receive under the terms of their contract of employment, the state auditor will be able to determine whether said board of education has complied with the above provisions of Section 7595-1, G. C., as amended, governing salaries paid to high school teachers.

827. September 15, 1915. 7730

Where the resolution of a county board of education was passed prior to August 26, 1915, the date when section 7730, G. C., as amended became effective, but subsequent to the date of the passage of the act of the General Assembly amending said section, which resolution directs that certain

schools shall be suspended and that the suspension shall be carried into effect after said amendment shall become effective, such action of the county board taken in connection with the action of the local boards suspending said schools in the manner required by said Section 7730, G. C., as amended, is a substantial compliance with the requirements of said amended section and such proceedings are legal.

Under provision of Section 7730, G. C., as amended, any suspended school may be re-established in the manner provided in said section whenever the number of pupils, who under the provisions of Section 7681, G. C., as amended in 106 O. L., 489, are qualified to attend the school in the suspended district when the same is re-established and who are enrolled in another school or schools to which they have been transferred by order of the board of education, is twelve or more.

The local board of education may take the necessary steps to re-establish a suspended school as required by provision of said Section 7730, G. C., as amended, at any time the school enrollment of said suspended district shows the required number of pupils.

7811

835. September 18, 1915. A person appointed by a county board of education as county school examiner under authority of Section 7811, G. C., as amended in 104 O. L., 102, may not continue to serve as such school examiner after having withdrawn from public school work as a district superintendent or as a teacher.

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836. September 18, 1915. The right of pupils, having the qualifications as to residence and training necessary to admit them to a high school, to have their tuition paid by the board of education of the school district in which they reside and which maintains no high school, should not be denied because of the failure of the district and county superintendents to properly certify them for promotion.

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5660,
p. 203

839. September 20, 1915. Where the solicitor of a city represents such city in an action in which said city is plaintiff and the board of education of the city school district is one of the defendants, said solicitor cannot represent said board of education for the reason that the interest of said city is adverse to that of said board of education and said board may employ counsel to defend it in said action, provided that before adopting a resolution employing such counsel and authorizing payment for services rendered there is filed with said board by the clerk thereof a certificate of available funds as required by Section 5660, G. C.

856. September 22, 1915. 1. Appropriation made by the General Assembly of this state for its educational institutions may not be used by said institutions for any purpose other than that for which said appropriations are made.

2. Students from other states attending such institutions for educational purposes only and having no habitation within this state other than such institutions which they are attending, and whose parents or families reside in another state, are not entitled to exercise the elective franchise nor to receive free scholarships limited by law to residents of this state.

890. October 5, 1915. It is the duty of prosecuting attorneys to prepare bond issues and transcripts for boards of education of which they are legal advisers. 7631

893. October 5, 1915. The board of education of a school district may, under authority of Section 7692, G. C., as amended 103 O. L., 897, appoint a school physician to perform the duties required by the provisions of Section 7692-1, G. C., 103 O. L., 897, and in its discretion said board may employ a trained nurse to aid in the performance of said duties, or said board may delegate said duties to the board of health or officer performing the functions of a board of health in said district, providing said board or officer is willing to assume the same, together with the power to appoint said school physician and employ said trained nurse if said board or officer determine that the same is necessary for the proper discharge of the aforesaid duties. 7692

898. October 6, 1915. The educational qualifications of applicants for a license to practice dentistry in this state, as provided by Section 1321-1, G. C., 106 O. L., 298, enter into and become a part of the requirements specified in Section 1324, G. C. Whether or not such qualifications in other states are equal to those in this state becomes a question of fact to be determined by the reference to the laws in each state involved or to the rules established by the dental board of said state. [1321-1] [1324]

902. October 8, 1915. The phrase "as herein provided" as used in Section 7730, G. C., as amended in 106 O. L., 398, modifies the word "suspended" and relates to the authority of the board of education of a rural or village school district to suspend any or all of the schools of its district as well as to the duty of said board to suspend a school where the average daily attendance of the preceding year was below ten, when directed to do so by the county board of education. 7730

The latter provision of said statute is directory rather than mandatory and a board of education cannot be compelled, upon the filing of the petition as therein provided, to take the necessary steps to re-establish a suspended school if said board finds that the suspended district contains the required number of pupils of lawful school age.

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7646

Insofar as rural school districts are concerned, the term "suspended district" as used in said statute relates to a subdivision of the rural school district which, having been established by the board of education of such rural district under authority of Sections 7644 and 7646, G. C., has been suspended by said board of education.

4696

903. October 8, 1915. The provision of Section 4696, G. C., as amended in 106 O. L., 397, that "if at least seventy-five per cent. of the electors of the territory petition for such transfer, the county board of education shall make such transfer" is directory.

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904. October 8, 1915. A board of education, in making changes in text-books for use in the public schools of its district, has no authority in law to pay the exchange price between the old and new books from its contingent fund, the ownership of the newly adopted books remaining with the pupils.

4740

913. October 12, 1915. 1. The only union of school districts which may be continued as a separate district for supervision purposes under authority of Section 4740, G. C., as amended in 106 O. L., 439, is that union of districts which, prior to the repeal of Section 7705, G. C., by the act of the General Assembly passed in 1914, were united for high school purposes and employed a superintendent and which now maintains a first grade high school.

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2. Whenever for any cause a district superintendent has not been appointed by September 1st in the manner provided by Section 4739, G. C., as amended in 104 O. L., 140, the county board of education, acting under authority of Section 4741, G. C., as amended in 104 O. L., 141, shall appoint such superintendent for a term of one year.

4692

919. October 13, 1915. In transferring territory from one school district to another within the county school district, under authority of Section 4692, G. C., as amended in 106 O. L., 397, it is the duty of the county board of education at the time of making said transfer to make an equitable division of the indebtedness of the school district from which said territory is transferred, and that part of said indebtedness which said board, in the exercise of its dis-

cretion, determines shall be assumed by the school district to which said territory is transferred, will become an indebtedness of the entire district as reformed and not merely an indebtedness of the territory transferred thereto.

In case the school district to which said territory is transferred votes in favor of a bond issue under authority of Section 7625, G. C., for the purpose therein mentioned, and said territory is thereafter transferred by the county board of education to said school district, said territory will be liable for its share of the bonded indebtedness so created. 7625

925. October 14, 1915. Under the provisions of Section 4726, G. C., as amended in 104 O. L., 139, and Section 4726-1, G. C., as found in 106 O. L., 442, school districts located in a township, may, by resolution passed by each of said boards, determine to submit to the electors of said school districts the question of centralizing the schools of said districts, and in said resolution determine whether said question shall be submitted at the general election or at a special election called for that purpose. Pursuant to said resolution the clerks of said boards of education, acting under authority and in compliance with the requirements of Section 4839, G. C., may publish in their respective districts a notice which shall specify the time and place of holding said election and the nature of the question to be voted upon. 4726 4726-1 4839

926. October 14, 1915. [The substance of this opinion is that under the law passed in 1914, at which time Section 4692 provided for a transfer of territory from one county school district to another county school district and the equitable division of the funds under that section should have been agreed upon by the county boards of education involved. This is now definitely provided for by Section 4696.] 4692 4696

961. October 22, 1915. Where the average daily attendance of a school in a rural school district was below ten for the preceding year and said school has been suspended by the board of education of said rural school district on the order of the board of education of the county school district directing such suspension and the pupils of said suspended district have been assigned to another school in the same rural district or to a public school in another district, it is the duty of said local board of education, under the provision of Section 7731, G. C., as amended in 104 O. L., 140, to provide transportation for those pupils only, residing in said suspended district, who live more than two miles from the school to which they are assigned. 7730 7731 7733

7620 962. October 22, 1915. A school house erected by a board of education upon leased land is within the rule of law which controls as to trade fixtures and may be removed by said board before the expiration of its lease. Wittenmeyer v. The Board of Education of Brooklyn, O. 10 C. C., 119.

7718 963. October 23, 1915. A principal or teacher in a public school is employed within the meaning of the provision of Section 7718, G. C., from the date of his acceptance of his appointment by the board of education of the school district and for the full term for which such appointment is made.

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12977
p. 288 965. October 23, 1915. Case of boy between age of fourteen and fifteen years who has passed the fifth grade, and who neglects to attend school but instead thereof assists his father on the farm, should be disposed of under provisions of Section 7773, G. C., as amended, 104 O. L., 233. A case of the kind under consideration should only be taken into the courts as a last resort.

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7735 974. October 27, 1915. Under the provisions of Section 7684, G. C., taken in connection with the provisions of Sections 7644 and 7646, G. C., the board of education of a rural school district has authority, in the exercise of its discretion, to transfer all the pupils in any grade from one subdistrict school to an adjoining subdistrict school within said rural district by giving sufficient notice to said pupils of such assignment, subject, however, to the provision of the first part of Section 7731, G. C., and to the further provisions of Section 7735, G. C. If, however, said board of education, acting under authority of Section 7731, G. C., provides transportation for all of the pupils affected by such order of assignment, said pupils may not exercise the right conferred by the provisions of Section 7735 G. C.

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7731
7735 Where the board of education of a rural school district assigns the pupils of the eighth grade in one school to the same grade in an adjoining school within said rural school district the pupils of said grade, living more than one and one-half miles from the school to which they are assigned, have not the right to demand that such grade be maintained in the school nearer to them in their own subdistrict but said pupils may exercise the right conferred by the provisions of Section 7735, G. C., unless transportation be provided by the board of education to the school to which said pupils have been assigned.

7731 If any of the pupils of said grade live more than two miles from the school to which they are assigned, Section

7731, G. C., makes it mandatory on said board of education to furnish transportation for such pupils.

If transportation is provided for the pupils of said grade said pupils may not demand that said grade be maintained in the school in the subdistrict in which they reside. 7646

The provisions of Section 7731-1, G. C., as found in 106 O. L., 496, do not repeal by implication the provision of Section 7731, G. C., as amended in 104 O. L., 140, which requires that where transportation is provided the conveyance must pass within one-half mile of the respective residences of all pupils, except when such residences are situated more than one-half mile from the public road. 7731-1

975. October 27, 1915. A county board of education has no authority in law to levy a tax for any purpose and may not, therefore, borrow money under Section 5656, G. C., for the purpose of paying for the transportation of pupils, furnished by said county board under provision of the latter part of Section 7731, G. C., as amended in 104 O. L., 140. 4744-3 7731

1004. November 10, 1915. The county board of education is without authority in law to purchase supplies, including a moving picture machine, for the purpose of aiding the county superintendent in his official supervisory work and pay for the same out of the "county board of education fund." 4744-3

1009. November 11, 1915. Ballots for members of township rural district boards of education upon which the judges of elections are unable to agree as to how they should be counted should be sealed in an envelope for that purpose and returned with the returns of the election to the clerk of the board of education of the district for which such election is held. 5111

The board of education of the district in canvassing the returns and determining the result of such election should open and count such ballots if the choice of the voter can be determined therefrom and preserve the same for further judicial or other investigation. If it is impossible for the board of education to determine the choice of the voter from the ballot the result of the election should then be determined exclusive of such ballots and the same preserved in like manner.

1012. November 12, 1915. Boys over the age of fifteen years and under the age of sixteen years may be employed in the transmission of messages, provided an age and schooling certificate be secured as required under the provisions of section 12994, G. C., amended, 103 O. L., 907. 12993 12994

Girls under the age of twenty-one may not be employed in the transmission of messages.

4747 1025. November 16, 1915. A teacher may not, while employed by the board of education of a school district, as a teacher in the schools of said district, be elected to the position of clerk of said board.

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4738 1031. November 17, 1915. Where the board of education of a village school district in July, 1915, certified to the board of education of the county school district in which said village school district is located, that said village school district maintains a first grade high school and employs a superintendent, and made application in writing to said county board to be exempt from district supervision and to have said village school district continue as a separate district under the direct supervision of the county superintendent, such action was in substantial compliance with the requirements of Section 4740, G. C., as amended in 106 O. L., 439, and the county board cannot require said board of education of said village school district to pay a proportionate share of the salary of the superintendent of the supervision district which said county board attempted to establish by its action in June, 1915, redistricting the schools of said county school district under authority and in compliance with the requirements of Section 4738, G. C., as amended in 104 O. L., 140, and which was intended to include said village school district.

4692 1034. November 17, 1915. The phrase "qualified electors" as found in that part of Section 4692, G. C., as amended in 106 O. L., 397, relating to the filing of a remonstrance against the transfer of territory by the board of education of the county school district, does not include women.

The county board of education may, under authority and in compliance with all the requirements of said Section 4692, G. C., as amended, transfer a part or all of a school district of the county school district to an adjoining district or districts of such county school district.

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7747 1037. November 19, 1915. The board of education of a rural school district, which maintains a school in which a course of study equivalent to the work in the first year of a high school is offered, may, under provision of Section 7747, G. C., as amended 104 O. L., 125, be required to pay the tuition of a pupil residing in said district who attends a high school maintained by the board of education of an adjoining school district, and who, having completed the course pre-

scribed for the first year in said high school, has been certified as eligible for the second year's work.

1054. November 30, 1915. The board of education of a village school district which is subject to both district and county supervision, and which maintains no high school, and which makes no provision for the schooling of its high school pupils in the manner authorized by the first part of Section 7750, G. C., may be required to pay the tuition of said pupils, residing in said district, who are eligible for admission to and are attending high school in another district. 7747 7748 7750

In case the board of education of said village school district has made the agreement authorized by the first part of said statute, any pupil residing in said district, and eligible for admission to high school, and living at a distance of three or four miles from the high school designated in said agreement, will still have the right, under the provision of said statute, to select a high school other than the one designated by said board of education, and to have his tuition paid by said board. 7750

Under provision of Section 7748, G. C., as amended in 104 O. L., 126, the board of education of a village school district which is subject to both district and county supervision, and which maintains a third grade high school, may be compelled to pay the tuition of graduates from such high school, residing in the district, at a first grade high school for two years. 7748

[This section provides further that "should pupils residing in the district prefer not to attend such third grade high school the board * * * shall be required to pay the tuition of such pupils at any first grade high school for four years," etc. Section 7749 makes an exception to this in the case of a district maintaining centralized schools and providing transportation.]

The board of education of a village school district which is subject to both district and county supervision, and which maintains a second grade high school, may be compelled to pay the tuition of graduates from such high school, residing in the district, at a first grade high school for one year.

1059. November 30, 1915. The library fund of a school district follows the school funds of such district into the depositary provided for said funds by the board of education of said district, under the authority of Section 7604, et seq., G. C. 7632 7604

4782
4763 In a city school district where the board of education has not as yet provided a depositary for the school funds or where the board of education has provided such depositary but has not yet dispensed with the position of treasurer of said funds, under authority of Section 4782, G. C., as amended 104 O. L., 138, the city treasurer, being treasurer of the funds of such school district, under the provisions of Section 4763, G. C., is treasurer of the library fund of said school district.

4782 Where the board of education of a city school district has provided a depositary for the funds of such district and has dispensed with the position of treasurer of said funds, under authority of said Section 4782, G. C., the clerk of said board, having succeeded to the duties of treasurer of said funds, under provision of the latter part of said Section 4782, G. C., is treasurer of the library fund of said district.

4763 In a village or rural school district where the board of education has not provided a depositary for school funds, the county treasurer, being treasurer of the funds of such school district, under provision of the latter part of said Section 4763, G. C., is treasurer of the library fund of said school district.

4782 Where the board of education of a village or rural school district has provided a depositary for the funds of said district and has dispensed with the position of treasurer of said funds, under authority of said Section 4782, G. C., the clerk of said school district, having succeeded to the duties of treasurer of said funds under the provision of the latter part of said Section 4782, G. C., is treasurer of the library fund of said district.

[See Section 7609 for the penalty for failure to provide a depositary.]

4712
5032 1082. December 9, 1915. The office of township trustee and member of the board of education in and for the same township are incompatible in that they may be and frequently are adverse in the matter of the levying and adjustment of tax rates as provided by Sections 5649-3a, 5649-3b, as amended 106 O. L., 180, and 5649-3c, G. C.

7646
7731 1104. December 16, 1915. The provision of the first part of Section 7731 G. C. as amended in 104 O. L., 140, taken in connection with the provisions of Section 7646, G. C., as amended in 104 O. L., 228, makes it the duty of the board of education of a rural school district to provide transportation for those pupils residing in that part of said rural district formerly known as a subdistrict of said rural

school district, and living more than two miles from the school maintained by said board of education in said part of said rural school district.

1132. December 31, 1915. In creating a new school district under authority of the latter part of Section 4736 G. C., as amended in 106 O. L., 397, the county board of education is required, as a condition precedent to the exercise of such authority, to give written notice to the boards of education of the districts to be affected by the transfer of territory, as required by provision of the first part of said section. 4736

Under provision of the first part of said Section 4736 G. C., as amended, taken in connection with the provisions of Section 4692 G. C., as amended in 106 O. L., 397, said transfer of territory will not take effect until a map is filed with the auditor of the county in which the territory to be transferred is situated, showing the boundaries of the territory to be transferred, and until a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county for ten days, and such transfer shall not take effect if a majority of the qualified electors residing in the territory to be transferred, shall within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer. 4736 4692

1133. December 31, 1915. A non-resident of a school district may not hold the office of clerk of the board of education of said district. 4747 4774

1134. December 31, 1915. The superintendent of a county school district as a member of the county board of school examiners may not teach in, be connected with or become financially interested in a summer school or any school which is not supported wholly or in part by the state. 7811 7812

1135. December 31, 1915. A county board of education acting under authority of Section 4692, G. C., as amended in 106 O. L., 397, and in compliance with its requirements, may transfer a part or all of a school district of the county school district to an adjoining district or districts of said county school district, and this may be done regardless of the fact that at an election held prior to the time of such transfer the electors of the district to which such territory is transferred, voted in favor of centralization. 4692

If the electors of a school district vote in favor of a bond issue under authority of Section 7625 G. C., and for 7625

the purposes therein mentioned, and thereafter the county board of education transfers a part or all of another school district to such district, upon said transfer being effected, said territory thus transferred will become a part of said district for all school purposes and will therefore be liable for its share of the bonded indebtedness so created. [Read in connection with this opinion No. 1299.]

4708 1137. December 31, 1915. The treasurer of a county may not act as a member of the board of education of a village school district located in such county.

4747 4764 4774 1150. January 6, 1916. The clerk of a board of education elected by said board at its meeting on the first Monday in January, under authority of Section 4747 G. C., as amended in 104 O. L., 133, is required, before entering upon the duties of his office, to give one bond in an amount and with surety to be approved by said board, payable to the state, conditioned for the faithful performance of all the official duties required of him. The board of education in fixing the amount of said bond should take into consideration the added duties which the clerk is required to perform under provision of the latter part of Section 4782 G. C., as amended 104 O. L., 158.

4749 1162. January 11, 1916. If the board of education of a township rural school district, in consolidating the schools of such district at two points within the township, finds that the most convenient location for one of the buildings is within the limits of a village school district located within said township, said board of education may, under authority of Section 4749 G. C., own school property within the limits of said village school district for the purpose of operating one of its schools under said plan of consolidation.

7690 4648 1200. January 24, 1916. The board of education of a school distrist is without authority in law:

1. To send a teacher under the employ of said board to a continuation school or to a university and pay a part or all of said teacher's salary and expenses while attending said continuation school or university.

2. To send said teacher into the school of another state or country in exchange for the services of a teacher to be sent into said district from such other state or country.

3. To make an allowance to a teacher, in addition to salary, for successfully maintaining a school children's savings bank.

The board of education of a city school district may establish and maintain an elementary school in the general

city hospital and contract with a teacher to give instructions in the branches mentioned in Section 7648, G. C. to children who are residents of said city district and who are confined in said hospital.

1209. January 28, 1916. A board of education may advertise for bids for heating and ventilating a school building under such general specifications as to permit bids being offered for the installation of any system of heating and ventilating, which system may be determined by the board after the bids are openetd. 7623

1215. January 29, 1916. Pupils who have resided in a township rural school district maintaining a second grade high school and who have chosen to attend a first grade high school in another district for the first three years of the high school course rather than to attend the second grade high school in the district in which they reside and who are not graduates of said second grade high school, are not entitled to have their tuition paid for the fourth year of their attendance at said first grade high school by the board of education of said rural school district maintaining said second grade high school. 7748

1265. February 14, 1916. In a city school district in which a school teachers' pension fund has been established and in which the board of education has not provided a depository for the school funds, or having provided a depository, has not dispensed with the treasurer of said funds under authority of said Section 4782 G. C., as amended in 104 O. L., 158, the city treasurer, being ex officio treasurer of the city school district, is treasurer of the school teachers' pension fund under provision of Section 7889 G. C. 4782

In a village or rural school district in which a teachers' pension fund has been established and in which the board of education has not provided a depository for the funds of said district in the manner provided by law and has not dispensed with the treasurer of said funds under authority of said Section 4782 G. C., as amended, the county treasurer, being ex officio treasurer of the school funds of said district, is treasurer of the school teachers' pension fund under authority of said Section 7889 G. C.

In a school district in which a school teachers' pension fund has been established and is being maintained, and in which the board of education has provided a depository for the school funds in the manner authorized by law and has dispensed with the treasurer of said funds under authority 7889

of said Section 4782 G. C., the clerk of said board, who is now performing all the services and discharging all the duties and who is subject to all the obligations required by law of the treasurer of such school district, is treasurer of said school teachers' pension fund under provision of said Section 7889 G. C.

4729 1266. February 14, 1916. Under provision of Section 4729 G. C., as amended in 104 O. L., 136, the members of the county board of education elected on the second Saturday in June, 1914, for the terms of one, two, three, four and five years respectively, will hold office until the third Saturday in January of the respective years 1916, 1917, 1918, 1919 and 1920, and until their respective successors are duly elected and qualified.

4763 1283. February 21, 1916. Under the provisions of Section 7763 G. C., as amended in 104 O. L. 232, the authority to excuse a child, within the age limit prescribed by said section, from attendance at a public school in the rural district in which such child resides, is vested in the district superintendent in charge of such rural school district and this authority may only be exercised by such district superintendent upon a satisfactory showing either that the bodily or mental condition of such child does not permit of its attendance at such public school or that the child is being instructed at home by a person qualified, in the opinion of such district superintendent, to teach the branches named in Section 7762 G. C. The clerk of the board of education of said rural school district has no authority under provision of said Section 7763 G. C., as amended, to determine the qualification of said person to give such instruction.

A person teaching a child at home, under the provision of the latter part of said Section 7763 G. C., as amended, is not required to hold a teacher's certificate or college diploma.

7731 1294. February 25, 1916. It is not legal for a board of education, under a contract with parents to transport their children to school, as provided by Section 7731 G. C., as amended in 104 O. L., 133, to pay said parents for transportation when the same was not furnished and said children were required to walk. When payments are so made, findings for recovery may be made against said parents for the amount so paid and if the board of education allowed the same with knowledge of the fact that such transportation was not furnished, said findings may be made jointly against said board and said parents.

1299. February 28, 1916. Where the board of education of a county school district, acting under authority of Section 4692 G. C., as amended, 106 O. L., 397, transfers a part or all of a school district of the county school district to an adjoining district of said county school district and the board of education of the local school district, as enlarged by said transfer of territory, acting under authority of Section 4726 G. C., as amended, 104 O. L., 139, and Section 7625 G. C., submits to the electors of said local district the questions of centralizing the schools of said district and of issuing bonds of said district for the purposes authorized by the provisions of said Sections 4726 and 7625 G. C., and said local board of education, by virtue of the authority conferred upon it by a vote of the electors of said district in favor of said centralization and bond issue, proceeds to take the necessary steps to centralize said schools, said county board of education and the board of education of an adjoining exempted village school district, or city school district, or another county school district, may not, after said centralization proceedings have been commenced and before same are completed, act jointly, under provision of Section 4696 G. C., as amended in 106 O. L., 397, on a petition of the electors of said territory or part thereof, transferred as aforesaid, filed with said county board of education under provision of said Section 4696 G. C., as amended, and praying for the transfer of said territory, or part thereof, to said adjoining exempted village school district or city or county school district. 4692 4696 4726 7525

1318. March 4, 1916. Prescribed form of hypothecation of bonds as collateral security for the deposit of funds of a school district in a bank duly designated as a depository for such funds under provisions of section 7604 to 7609, inclusive, G. C. 7604-7609

1321. March 6, 1916. The citations of the statutes relating to receipts and expenditures of moneys by county boards of education as prepared by the Bureau of Inspection and Supervision of Public Offices, together with the rulings made by said Bureau in connection therewith, as set forth in said opinion, are in conformity with opinions heretofore rendered by the Attorney General interpreting the provisions of said statutes.

1322. March 6, 1916. The authority of the board of education of a county school district to transfer territory from one local district to another within such county school district is under provision of Section 4692 G. C., as amended, 106 O. L., 397. 4692 4696 4684

The term "county school district" as the same appears in the phrase "to another county school district" in the provision of Section 4696 G. C., as amended 106 O. L., 397, refers to a county school district as defined by Section 4684 G. C. as amended 104 O. L., 133, and as distinguished from a rural or village or city school district.

7687 1400. March 20, 1916. A teacher in the public schools may not, under authority of section 7687 G. C. make up for a day lost during the term by teaching on the 22nd day of February (Washington's Birthday).

2818 1414. March 23, 1916. Where a member of the board of education of a rural school district, as a taxpayer, brings an action to enjoin another member of said board of education from continuing to serve as such member after his removal from the district, and a permanent injunction is granted, the claim of the attorney representing the plaintiff in said action, for services rendered in connection therewith, may not be allowed by said board of education and paid out of the school funds of said district.

7669 4696 1416. March 24, 1916. The boards of education of two adjoining village school districts have no authority in law to unite said village school districts for high school purposes, only.

4692 1419. March 24, 1916. The board of education of a county school district may not, under provision of Section 4692 G. C., 106 O. L., 397, transfer territory from a rural school district of the county school district to an adjoining district or districts of said county school district after proceedings have been commenced to centralize the schools of said rural school district.

7822 7830 1421. March 25, 1916. The effect of the provision of the first part of Section 7822 G. C., 106 O. L., 340, is to extend the authority of and impose the duty on a county board of school examiners to examine an applicant without previous professional training and without any teaching experience, and if said applicant complies with all the rules and regulations of said board applicable to applicants for a one-year certificate, and if upon investigation said board finds that said applicant is not less than eighteen years of age and is of good moral character and upon such examination in the subjects prescribed by section 7830 G. C. to be taught in any elementary school supported wholly or in part by the state in any village or rural school district, said applicant makes the necessary grades required by said examining board for the issuance of a one-year certificate, it becomes

the duty of said board of school examiners to issue a one-year certificate to such applicant in compliance with the requirements of the statutes governing the issuance of such certificate.

1434. March 28, 1916. Where a minor child of the age of thirteen years is taken from the care and custody of its parents, who are nonresidents of a school district within the county, by order of the Judge of the Juvenile Court of such county, and by the further order of said Court is placed under the care and control of a person who is an actual resident of such school district, unless otherwise ordered by the Court, said child becomes the ward of said person, resident of such school district, under provision of Section 1672, G. C., 103 O. L. 876, and as such is entitled to attend the public schools of said district without charge for tuition under provision of Section 7681 G. C., 106, O. L. 489. (1672)

Under the provisions of Section 1639 G. C., 104 O. L., 176, in Hamilton County the power and jurisdiction conferred by the statutes as found in the Chapter of the General Code relating to Juvenile Courts is exercised by one of the Judges of the Court of Common Pleas of said county in the division of Domestic Relations. (1639)

1438. March 30, 1916. The filing with the board of education of a county school district of the remonstrance provided for in Section 4692, G. C. 106, O. L. 397, three days before the filing of the map with the county auditor, as therein provided, showing the boundaries of the territory proposed to be transferred by said county board of education acting under authority and in compliance with the requirements of said Section 4692 G. C., is a sufficient compliance with the provisions of said statute and is legal. 4692

Anyone of the electors who resides in the territory proposed to be transferred and who signed said remonstrance has the right, at any time before the expiration of the thirty-day period provided for in said section 4692 G. C., to withdraw his name from said remonstrance.

If, upon investigation at the expiration of said thirty-day period, the board of education of said county school district finds that the number of qualified electors residing in the territory proposed to be transferred and remonstrating against such proposed transfer is less than a majority of the qualified electors residing in such territory, and if said county board of education has complied with all the requirements of said Section 4692, G. C., the transfer of such territory is legally affected and becomes a part of the

school district to which the same is transferred for all school purposes.

4681, 4682. 1461. April 7, 1916. Upon the incorporation of a part of the territory of a township rural school district into a village the territory so incorporated automatically becomes a village school district, providing the valuation of the same for taxation is at least five hundred thousand dollars, under provision of Section 4687 G. C., 104 O. L., 134, taken in connection with the provisions of Section 4682 G. C., 103 O. L., 545. In case of such incorporation the title to school property held by the board of education of said rural school district in trust for the use and accommodation of the pupils of said rural district, although located within the corporate limits of said village, will remain in said board of education of said rural school district.

4759. 1473. April 13, 1916. The term "taxation" as used in the first part of Section 4759 G. C. does not include the term "assessment," the latter term being confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity and levied with reference to special benefits to the property assessed. Lima v. Cemetery Association, 42 O. S., 128.

No part of the cost of the improvement of a street on which school property, used exclusively for public school purposes, abuts can be assessed against such property and the board of education of the school district in which such property is located is neither required nor authorized to pay any part of the cost of said improvement out of its contingent fund or to levy a tax for said purpose.

5660. 1483. April 18, 1916. Where the board of education of a school district at the time of letting a contract for the construction and equipment of a school building for the use and accommodation of the pupils residing in said district, has sufficient funds available for such purpose as evidenced by the certificate filed with said board by its clerk in compliance with the requirement of Section 5660 G. C., but subsequent to the time said obligations are incurred the bank, located in said district duly designated by said board of education as the depositary for the school funds, is closed and a receiver appointed, so that said board of education is unable to draw on the funds deposited in said bank to pay said obligations as the same become due, said board of education, by complying with the requirement of Section 5658 G. C., i. e., by first determining by formal resolution that the amounts due according to the terms of the aforesaid con-

5658.

tract are existing, valid and binding obligations of said school district, may borrow money for said purpose under authority of Section 5656 G. C.

1496. April 19, 1916. Where a majority of the presidents of the various village and rural school districts of a county school district were present at a meeting called by the county superintendent under authority of Section 4730 G. C., 104 O. L., 136, and held on the 14th day of January, 1916, for the purpose of electing a successor to the member of the county board of education whose term, by provision of Section 4729 G. C., 104 O. L., 136, expired on said date, and there was a failure to elect such successor owing to the fact that no candidate received the vote of a majority of the members present, which under provision of said Section 4730 G. C., is necessary to elect said successor, said presidents may be called together at any time subsequent to said date for the purpose of electing such successor to the member of the county board of education whose term of office expired on said date. 4730. 4729.

If the county superintendent refuses to issue the call for said meeting the same may be held by a majority of the several presidents issuing a call for such meeting providing the notice in writing served upon each of the presidents of the various village and rural school districts above referred to sets forth the time when, the place where and the purpose for which said meeting is to be held.

1541. May 5, 1916. Where a rural school district is united with an adjoining village school district for high school purposes under provision of Section 7669 (104 O. L. 229) et seq. G. C., and contributes an average of $70.00 per month toward the salaries of the teachers in the joint high school established and maintained under said statutes, the village school district contributing an average of $10.00 a month toward said salaries, said rural school district is not, on this account, debarred from receiving state aid, providing its board of education has, in all other respects, complied with the requirements of Section 7595 (106 O. L. 430) et seq. of the General Code governing the administration of the state aid fund. 7669.

With the exception of the power reserved by provision of section 7672 G. C., to the Board of Education of each of the school districts comprising the union for high school purposes, to levy a tax and set aside the proceeds of such levy as a separate fund for the maintenance of said high school, the joint high school committee when properly 7672.

elected under authority and in compliance with the requirement of section 7670 G. C., exercises the same powers and performs the same duties in connection with said high school as are exercised and performed by the board of education of a school district which maintains its own high school.

7670.

4692. 1546. May 6, 1916. A remonstrance filed on May 3, 1916, is within the thirty day limitation of Section 4692 G. C., 106 O. L., 397, when the map therein referred to was filed on April 3, 1916.

7881. 1547. May 6, 1916. The term "teacher" as found in the chapter relating to teachers' pensions and as defined by section 7881 G. C., does not include a person who, prior to the time of the establishment of a teachers' pension fund by the board of education of a school district, was employed by said board of education as a teacher in the schools of said district but whose employment was terminated before any steps were taken by said board to establish said fund.

1549. May 8, 1916. It does not become the mandatory duty of a board of education under the provisions of section 7713 G. C., to determine or re-determine what text books shall be used in the schools under its control, solely by reason of the fact that five years have elapsed since such book or books were first adopted.

7714.
7715. No other officer or authority may determine what text books shall be used in the schools of any district except in case of failure of the board of education to make available to all the youth of school age of the district lawful text books as required by sections 7714 and 7715 G. C.

After a text book or text books are lawfully adopted, so long as the same are made available to all the youth of school age of the district according to the provisions of sections 7714 and 7715 G. C., they continue to be the lawful text books to be used in the schools of such district.

When five years or more have elapsed since the last preceding adoption of a text book, the board of education of the district may, at a regular meeting held between the first Monday of February and the first Monday of August of any year, by a majority vote of the members elected thereto, adopt another text book on the same subject to be used in the schools of the district.

7620 NOTE ON 7620.

The opinion of the attorney general rendered on this section in 1912 and printed on page 185 of the school laws to the effect that a board of education may not

become a member of a mutual insurance association is no longer in effect, as the Constitution of Ohio of 1912 in Section 6 of Article VIII specifically provides that nothing in that section shall prevent the insuring of public buildings or properties in mutual insurance associations or companies. Therefore, it is lawful for a board of education to insure its property in a mutual insurance association.

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